



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: The Jones/Hill Joint Venture--Reconsideration

File: B-286194.2

Date: December 8, 2000

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John L. Formica, Esq., and Jerold D. Cohen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's decision, pursuant to Office of Management and Budget Circular No. A-76, that it would be more economical to perform services in-house, rather than contract with a private-sector firm, was properly dismissed as academic where the corrective action proposed by the agency, while not addressing all of the issues raised by the protester, may affect the cost comparison and the attendant determination whether to perform the requirements in-house or by contract.

DECISION

The Jones/Hill Joint Venture requests reconsideration of our decision in The Jones/Hill Joint Venture, B-286194, Nov. 22, 2000, dismissing as academic Jones/Hill's protest of the Department of the Navy's decision, pursuant to Office of Management and Budget (OMB) Circular No. A-76, that it would be more economical to perform base operations and support services in-house at the Naval Air Station Lemoore (NASL), California, rather than contract for these services with Jones/Hill under solicitation No. N62474-98-R-2069.

The request for reconsideration is denied.

In its protest, Jones/Hill challenged the adequacy of the agency's comparison of the performance reflected in the Most Efficient Organization/Management Study (MEO/MS) with the performance reflected in Jones/Hill's proposal, and the reasonableness of the agency's determination that after certain adjustments to the MEO/MS, it and Jones/Hill's proposal were equal in terms of level of performance and performance quality. Jones/Hill also contended that the agency improperly failed to inform the offerors of certain changes to the agency's requirements, as well

as the existence and terms of an interservice support agreement between the Navy and the General Services Administration (GSA), and a memorandum of agreement between the NASL and GSA, which, according to the protester, adversely affected its competitive position.

Following an alternative dispute resolution session that our Office conducted with the parties, the agency, by letter dated November 16, 2000, informed our Office that it “intends to take corrective measures” in response to a number of contentions raised by the protester regarding the propriety of the agency’s comparison of the performance reflected in the MEO/MS with the performance reflected in Jones/Hill’s proposal, and the ultimate determination that, after certain adjustments, the MEO/MS and Jones/Hill’s proposal were equal in terms of performance. Specifically, the agency stated that it would “examine the 68 ‘strengths’” identified in Jones/Hill’s proposal during the evaluation process, and “compare those ‘strengths’ that predict a higher quality performance . . . to the MEO,” with the MEO/MS being “adjusted as necessary.” The agency explained that as part of these “corrective measures” it would review the Jones/Hill proposal and the MEO/MS to determine “whether different approaches offer a comparable level of performance,” and would also review the MEO/MS to determine whether or where it proposes to perform work by non-MEO personnel, with the MEO/MS being adjusted as appropriate.

It was apparent, and the parties do not argue otherwise, that the corrective measures to be taken by the agency may result in some adjustments being made to the MEO/MS, which in turn would affect the cost comparison between the MEO/MS and Jones/Hill’s proposal. As such, it was unclear whether the agency would determine to perform the requirements in-house, or by contract with Jones/Hill. Accordingly, we found that the corrective measures, while not addressing all of the issues raised by Jones/Hill in its protest, rendered the protest academic. Since it is not our practice to consider academic protests, we dismissed the protest. In doing so, we specifically noted that should the agency again determine to perform the requirements in-house, and should Jones/Hill decide to protest that determination, its protest may include, among other things, the issues raised in this protest that, in the protester’s view, were not adequately addressed by the agency’s corrective measures.

In its request for reconsideration, Jones/Hill argues that our Office erred in dismissing the protest because the agency’s proposed corrective measures do not address all the issues raised by Jones/Hill in its protest. Jones/Hill contends that because of this, the agency’s proposed corrective measures are “inadequate” and our dismissal of its protest as academic was “premature.” Reconsideration Request at 8. In support of its request, Jones/Hill points to a number of decisions issued by our Office that purportedly stand for the proposition that “simply proposing corrective action is not enough--the corrective action must resolve the issues raised by the protester.” Id. at 9.

Our Office may dismiss protests as academic in any number of circumstances. For example, we may dismiss a protest as academic where the corrective action proposed by the agency addresses all of the issues raised by the protester, Elec. Assocs., Inc., B-240666.2, Oct. 11, 1991, 91-2 CPD ¶ 327 at 2, or where the agency cancels the underlying solicitation and addresses none of the issues raised. PBM Constr.--Recon., B-242221.3, B-242221.4, Aug. 12, 1991, 91-2 CPD ¶ 181. We may also dismiss a protest as academic where the corrective action, while not addressing the issues raised by the protester, appears appropriate based upon the particular circumstances of the acquisition and protest. S. Tech., Inc.--Recon. and Costs, B-278030.3, April 19, 1998, 98-1 CPD ¶ 125 (protest challenging the terms of a solicitation was properly dismissed as academic where the agency, while conceding that the terms of the solicitation may have misled the protester, demonstrated that a recompetition was impracticable and had taken appropriate corrective action by agreeing to reimburse the protester for its proposal preparation costs).

As explained in our prior decision and referenced above, even though the Navy's proposed corrective measures may not address all of the issues raised by Jones/Hill in its protest, the measures may affect the cost comparison and the attendant determination whether to perform the requirements in-house or by contract with Jones/Hill. Although we appreciate Jones/Hill's desire that our Office issue a decision directly resolving all of the issues raised in its protest, we simply will not proceed to consider matters that, under the circumstances, may well make no difference in the procurement's outcome.

The request for reconsideration is denied.

Anthony H. Gamboa
Acting General Counsel